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court for the defendant, must consider the evidence of the first trial alone.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3476-3486; Dec. Dig. § 867.\* 1 Va.-W. Va. Enc. Dig. 578; 14 Va.-W. Va. Enc. Dig. 90.]

**2. Street Railroads (§ 117\*)—Injury to Pedestrian—Contributory Negligence.**—In a personal injury action by one struck by a street car, where plaintiff testified that, when she reached the outside rail of the track, she stopped to see how she might cross the intervening space to the sidewalk, which was very muddy, and that she remained in that position for about two minutes until struck, it was improper to refuse to submit to the jury the question of concurrent negligence.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 239-257; Dec. Dig. § 117.\* 12 Va.-W. Va. Enc. Dig. 848; 14 Va.-W. Va. Enc. Dig. 967; 15 Va.-W. Va. Enc. Dig. 950.]

Error to Law and Chancery Court of City of Norfolk.

Action by Lily Reichenstein against the Virginia Railway & Power Company. There was a judgment for defendant, and plaintiff brings error. Affirmed.

*S. M. Brandt*, of Norfolk, for plaintiff in error.

*Andrew D. Christian*, of Richmond, *W. H. Venable*, of Norfolk, and *H. W. Anderson*, of Richmond, for defendant in error.

#### MUTUAL LIFE INS. CO. OF NEW YORK *v.* BOARD, ETC.

Jan. 15, 1914.

[80 S. E. 565.]

**1. Corporations (§ 447\*)—Ultra Vires Contracts.**—Where the president, general manager, and principal incorporator of a corporation, to protect it and its creditors, procured a policy of insurance on his life for the benefit of the corporation which paid the premium, the contract of insurance was not ultra vires act on the part of the corporation.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 1786, 1788, 1807; Dec. Dig. § 447.\* 3 Va.-W. Va. Enc. Dig. 551.]

**2. Insurance (§ 116\*)—"Insurable Interest"—Corporation's Interest in Officer's Life.**—A corporation had an insurable interest in the life of its president, general manager, and principal incorporator, whose relation to and knowledge of its financial and manufacturing interests was such that his death could not fail to result in serious and substantial loss to its creditors, and others interested in its

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

prosperity, and hence where a policy on his life for its benefit was a bona fide transaction, consummated with the honest purpose of protecting the corporation against loss in the event of his death, it was not obnoxious to public policy.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 158-162; Dec. Dig. § 116.\* 7 Va.-W. Va. Enc. Dig. 776.

For other definitions, see Words and Phrases, vol. 4, pp. 3670-3674; vol. 8, p. 7690.]

Error to Circuit Court of City of Alexandria.

Action by the Board, Armstrong & Co. Corporation against the Mutual Life Insurance Company of New York. Judgment for plaintiff, and defendant brings error. Affirmed.

*John M. Johnson*, of Alexandria, for plaintiff in error.

*S. G. Brent*, of Alexandria, *Chas. E. Plummer*, of Petersburg, and *C. E. Nicol and Gardner L. Boothe*, both of Alexandria, for defendant in error.

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CHESAPEAKE & O. RY. CO. *v.* SWARTZ.

Nov. 20, 1913. On Petition to Rehear, Jan. 15, 1914.

[80 S. W. 568.]

**1. Master and Servant (§§ 260, 261\*)—Declaration—Affirmative Defense.**—Assumption of risk and contributory negligence, being matters of defense, need not be negated by the declaration.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 844-848, 849-854; Dec. Dig. §§ 260, 261.\* 9 Va.-W. Va. Enc. Dig. 718; 14 Va.-W. Va. Enc. Dig. 697; 15 Va.-W. Va. Enc. Dig. 657.]

**2. Pleading (§ 193\*)—Declarations—Sufficiency.**—Where plaintiff's declaration in a negligence case affirmatively shows that he assumed the risk or was guilty of contributory negligence, it is demurrable.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 425, 428-435, 437-443; Dec. Dig. § 193.\* 10 Va.-W. Va. Enc. Dig. 397; 14 Va.-W. Va. Enc. Dig. 770; 15 Va.-W. Va. Enc. Dig. 729.]

**3. Master and Servant (§ 180\*)—Injury to Railroad Employee—Fellow Servants.**—Under the express provisions of Const. § 152, it could not be set up as a defense in a car repairer's action for injuries from the negligent moving of a car beneath which he was working that the persons in charge of the engine and causing the movement were plaintiff's fellow servants.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 359-361, 363-368; Dec. Dig. § 180.\* 6 Va.-W. Va. Enc. Dig. 19; 14 Va.-W. Va. Enc. Dig. 440; 15 Va.-W. Va. Enc. Dig. 397.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.